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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CARLOS H.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D045583

(San Diego County
Super. Ct. No. J515533)

Proceedings in mandate after reference to a Welfare and Institutions Code section 366.26 hearing. Julia Kelety, Judge. Petition denied.

Carlos H. (the father) seeks review of juvenile court orders terminating his reunification services and setting a Welfare and Institutions Code section 366.26

hearing.¹ He contends the court erred in finding that returning his child, K., to his custody would create a substantial risk of detriment. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On January 22, 2003, the Santa Clara County Social Services Agency petitioned under section 300, subdivisions (b) and (j) on behalf of one-year-old K., alleging she was at risk of being exposed to domestic violence and corporal punishment in the care of her parents, the father and Flora M. (the mother). The petition also alleged K.'s half-siblings had earlier been taken into protective custody because of sexual abuse of a half-sibling by the sibling's father and because of exposure to domestic violence and corporal punishment. The parents had a history of domestic violence, the mother had unresolved mental health issues and the father displayed violent behavior. The father began a program for domestic batterers in January 2003, but was terminated from that program in March and from parenting education classes in May because of excessive absences. The social worker reported he did not take responsibility for his actions.

After K.'s whereabouts could not be determined for a time, she was taken into protective custody on May 12, 2003. The court ordered her detained. On June 24 it found the allegations of the petition true and ordered the father to participate in parenting classes, a domestic violence program, a psychological evaluation and individual therapy, and ordered supervised visitation.

¹ All statutory references are to the Welfare and Institutions Code.

The social worker reported K. was placed with her paternal great-aunt in San Diego in October 2003, and in November the father moved to San Diego to be near her. He had attended a domestic violence program before moving and said he would be starting a new program in San Diego in December. He attended 15 of 18 counseling sessions in Santa Clara County. His therapist said it was too early in therapy to give an opinion on whether he was able to care for K., but opined he would benefit from continued therapy. The father told the Santa Clara social worker he would contact a new therapist when he had money for the therapist's fees.

At the six-month review hearing on December 29, 2003, the court terminated the mother's reunification services and ordered six more months of services for the father.

In March 2004 the Santa Clara social worker reported the father was living with the paternal grandfather in San Diego. He was attending a 52-week domestic violence program and had begun employment in February. The mother said she hoped she and the father would marry. The father began having unsupervised visits with K. in May. He moved to a motel with the mother. He continued to participate in a domestic violence program, but said he did not have enough money for the couples' counseling that was ordered by the Santa Clara court. The social worker in Santa Clara said she had offered him financial help to pay for services. He denied she had done so. He was having successful unsupervised visits., but the social worker recommended the visits be supervised because of concern the mother was present at the visits. The social worker was worried that the father could not parent K. alone, but would instead rely on the mother, who had not worked on her reunification issues. The social worker also

expressed concern the father had not informed her when he changed his address. She said he had shown positive changes since he moved to San Diego, including getting a good job, moving out of his parents' home, attending a batterers' program and visiting K. She, however, was worried that he put his needs before K.'s and did not listen to suggestions on how to care for her.

In July the Santa Clara social worker reported she had difficulty contacting the father and he did not return her calls. She recommended providing four more months of services for him and transferring the case to San Diego so a social worker there could monitor the case more closely.

The San Diego juvenile court accepted the transfer on August 16, 2004, and ordered the San Diego County Health and Human Services Agency (the Agency) to provide services. On September 8 the court ordered the San Diego social worker to contact the father's prior therapist and determine if he had completed the therapy portion of his case plan, and if he had not done so, ordered him to participate in further therapy.

In November the social worker reported that in October she went to the father's home and found him upset, crying and overwhelmed. She said the day before the visit he and the mother had a physical confrontation and there were scratches on his face and neck. He said he had stopped attending domestic violence classes because he could no longer afford them. When the social worker explained the Agency would help to pay for the course, the father said he had not known that. The social worker asked the father to call the program to ask if he could reenroll and to call the therapist to whom she had referred him. He said he would do so. The social worker then learned the father had

been terminated from the domestic violence program for excessive absences in August. The father said he had not maintained contact with the social worker because he wanted to have everything in order before he spoke with anyone. K. continued to do well in the home of her paternal great-aunt, and the family wanted to continue to care for her. The social worker opined it would be detrimental to return K. to the father because he had not completed individual therapy or a domestic violence program, he had not maintained a consistent income and he continued to have violent altercations with the mother.

At the 18-month hearing on December 15, 2004, the father testified he completed a 16-week parenting without violence class in Santa Clara County and continued domestic violence classes after he moved to San Diego until he could no longer afford them. He said he did not attend counseling in San Diego because the Santa Clara judge did not recommend it. He testified he moved to San Diego in November 2003, the mother came in January 2004 and they lived together for a couple of months. He said in October they had a violent confrontation, and she no longer lived in San Diego. He testified the social worker in Santa Clara did not tell him he could receive assistance in paying for services and he had not contacted the Agency because he thought he was obligated to pay for services himself. He said he had been trying to get back into the domestic violence program, but no one returned his calls.

The social worker testified she referred the father to therapy, advised him to attend domestic violence classes and told him the Agency would pay for services. She said he had received referrals for services in August and October 2004. The father did not tell her he was unable to enroll in the programs. She said he appeared remorseful about the

domestic violence incident, but she opined he had made very little progress in understanding the problem of domestic violence. She expressed concern the father might not be able to protect K. from the mother or provide financial support and he had not kept in contact with the social workers.

The court found the father had not made substantial progress with his case plan and returning K. to his care would be detrimental. It continued her as a dependent child, terminated reunification services and referred the matter to a hearing under section 366.26.

DISCUSSION

The father contends the court erred in finding returning K. to his custody would create a substantial risk of detriment. He argues he participated in all aspects of his reunification plan, including a parenting without violence class, individual counseling and a domestic violence program. He also maintains he was extremely successful in visiting his child and there are reports from the visitations that praise their interactions and his caring ways.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.'" (*In re Luwana S.* (1973) 31 Cal.App.3d 112, 114, quoting *In re Biggs* (1971) 17 Cal.App.3d 337, 340.) The appellant bears the burden to

show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

There was substantial evidence that returning K. to the father would create a substantial risk of detriment. The father had 18 months of services but had not completed the domestic violence or individual therapy components of his reunification plan. Also, he and the mother had not participated in couples' counseling as ordered by the court after the mother's reunification services were terminated. The father's problems with domestic violence had not been resolved. K.'s caretaker reported witnessing his rage when she questioned him after he returned K. late from a visit. Just two months before the 18-month hearing he and the mother had a domestic violence incident.

The father argues he had to stop domestic violence classes because he could no longer pay for them after he was laid off from his job and the social worker did not tell him he could get financial assistance to pay for services. He also claims the court in Santa Clara did not recommend further therapy when he moved to San Diego. The Santa Clara social worker, however, reported telling the father he could receive help in paying for services. His therapist in Santa Clara recommended he continue in therapy.

Determinations of the credibility of witnesses and resolutions of conflicts in the evidence are for the trier of fact. (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226-1227.) The court was "entitled to find the social worker credible and to give greater weight to her assessments and testimony." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) Also, the father did not keep in contact with the social workers and never brought any concerns to the attention of his attorney or to the juvenile court.

In addition to domestic violence, the social workers reported other concerns about returning K. to the father's care. The father had not lived on his own until May 2004 and had not been able to maintain a steady income. At the 18-month hearing he testified he was unemployed, but was waiting for his work to resume. K.'s caregiver was concerned about the way the father cared for K. when they had unsupervised visits and he did not accept advice from others on how to care for her. The social workers opined it would be detrimental to return K. to the father. Substantial evidence supports the court's finding that returning K. to the father's care would create a substantial risk of detriment.

DISPOSITION

The petition is denied.

NARES, Acting P. J.

WE CONCUR:

McDONALD, J.

McINTYRE, J.